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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection	)	MD Docket No. 98-200
of Regulatory Fees for	)	
Fiscal Year 1999	)	

REPLY COMMENTS OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys, hereby submits this reply to the comments filed in the above-referenced proceeding. 1/ Based on the record here, GE Americom urges the Commission to address existing inequities in its fee structure for geostationary orbit space stations ("GSOs") by making four changes: (1) ensuring that the costs of developing new satellite services are not imposed on existing licensees; (2) requiring COMSAT to pay its fair share of the costs of Commission regulation; (3) collecting regulatory fees from non-U.S. satellite licensees that serve the U.S. market; and 4) applying international bearer circuit fees only to common carrier service providers. GE Americom also agrees that the Commission needs to make an effort to clarify its cost accounting system and make sure Commission employees have detailed information regarding implementation of the system.

1/ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, MD Docket No. 98-200, *Notice of Inquiry*, FCC 98-298 (rel. Dec. 4, 1998) ("*NOI*").

I. COSTS FOR DEVELOPING NEW GSO SERVICES SHOULD NOT BE IMPOSED SOLELY ON EXISTING GSO LICENSEES

The *NOI* recognizes that GSO fee payors have long objected to the absence of a reasonable relationship between the increasing fees paid by GSO satellite operators and the relatively limited burden that regulation of in-orbit satellites imposes on the Commission. *NOI* at ¶ 10. The comments here confirm that the increases in GSO regulatory fees do not fairly reflect the costs imposed by GSO operations. In order to address this problem, the Commission must at a minimum separate out costs associated with the development of new services and charge them as overhead.

Both GE Americom and PanAmSat demonstrate in their comments here that the regulatory fees paid by GSO licensees do not satisfy the requirement that such charges be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. § 159(b)(1)(A). *See* GE Americom Comments at 4; PanAmSat Comments at 1. Once satellite services are authorized, the Commission incurs only minimal regulatory expenses overseeing satellite operations. *Id.* Satellite services have been substantially deregulated in recent years, and most of these services are now offered on a non-common carrier basis. *Id.* Additionally, as stated by PanAmSat, "the Commission rarely becomes involved in interference issues for licensed satellites, and . . . only occasionally conducts satellite rulemaking proceedings that do not relate solely to new or proposed services." PanAmSat Comments at 1.

The most resource-intensive aspect of Commission regulation of GSO licensees occurs at the application processing stage. Yet, as both GE Americom and PanAmSat point out, the costs of processing these applications are already recovered through the substantial application fees paid by prospective satellite service providers. GE Americom Comments at 4-5; PanAmSat Comments at 1. Regulatory fees assessed against GSOs are thus "grossly out of proportion to the degree of regulatory oversight exercised by the Commission for this service," and need to be remedied. PanAmSat Comments at 2.

In particular, the Commission must re-visit the assessment of costs relating to new services. As already indicated, Section 9 requires that the regulatory fees assessed on GSOs be "reasonably related" to the benefits conferred by Commission oversight. GSO regulatory fees must therefore be comprised of "only those costs incurred in regulating existing GSO services" and cannot include the costs of establishing new satellite services. PanAmSat Comments at 2. Instead, these costs should be spread *pro rata* among all ratepayors. *Id.;* GE Americom Comments at 5.

The rationale for such treatment of new services costs is straightforward. At the time the Commission begins to develop a band plan and service and licensing rules for a new service, the FCC has no way to predict what entities will eventually benefit from these regulatory activities. The Commission simply cannot know in advance who will be granted licenses and build systems once the groundwork for establishing a new service has been completed. Thus, at the

time the costs are incurred, it is impossible for the Commission to determine what companies will ultimately reap the benefits from the Commission's actions.

The Commission's current practice unfairly assumes that the costs of developing new GSO satellite services will benefit all operators of existing GSO satellites and only those operators. There is no basis for this assumption, however. Instead, there are numerous instances in which companies that never provided satellite services before applied for and obtained licenses for new services. For example, in the first Ka-band processing round, licenses were granted to at least seven entities that currently have no operational GSO satellites. Similarly, some existing operators chose not to file Ka-band applications. Yet the Commission's fee system unjustly imposed the full costs of developing Ka-band service rules on licensees of operational satellites in other bands.

Because it is impossible to predict in advance who will become providers of a newly-developed service, costs of new satellite services must be treated as overhead rather than imposed on one category of existing licensees. Any other treatment of these costs will unfairly skew competition in the satellite services market.

Commenters who object to overhead treatment of new services costs fail to respond adequately to the blatant unfairness of the current system. For example, BellSouth and PCIA argue against spreading the costs of developing new services on all fee payors on the grounds that many will be forced to pay for something that will provide them with no benefit. BellSouth Comments at 7-9;

PCIA Comments at 2-3. In fact, however, the current system has exactly that effect. As discussed above, the Commission's existing treatment of new services costs currently requires entities that receive no benefit from the regulatory actions needed to develop a new service to bear the costs of those actions. Thus, the imposition of regulatory fees on GSO licensees to cover the costs of developing new services is neither authorized by Section 9, nor "reasonably related" to the benefits conferred upon GSO licensees by the Commission's regulation.

Lockheed Martin's objections to the creation of a separate regulatory fee category for new services should also be rejected because Lockheed Martin apparently misunderstands the proposal put forth in the *NOI*. Specifically, Lockheed Martin states that under the *NOI*'s proposal, regulatory costs associated with new services "would be charged to the appropriate service." Lockheed Martin Comments at 5. Lockheed Martin objects that this could deter the development of new communications services because of concern about the "assessment of potentially enormous regulatory costs on a small number of innovative service providers." *Id.* at 6.

The proposal made in the *NOI* would have no such impact. Instead, the *NOI* proposes to treat costs incurred for new services (where the Commission has not yet authorized a licensee) as overhead collected from fee payors in all categories. *NOI* at ¶ 16. The Commission would begin charging costs to the appropriate service *only after* licenses or authorizations have been issued, just as it does now. *Id.* Thus, contrary to Lockheed Martin's assumption, the *NOI*'s proposal

would encourage the development of new services by ensuring that initial regulatory costs are spread over all categories of fee payors.

Lockheed Martin also overstates the practical obstacles to establishing a new services category. Lockheed Martin Comments at 5-6. There should be no significant difficulty in identifying as a new service any proposal to operate in new frequencies, requiring the development of a band plan and service and licensing rules. Recent examples of such new services would include Ka-band GSO services, V-band GSO services, and Digital Audio Radio Services.

The Commission's current treatment of new services costs violates the statute by assigning costs to existing service providers who do not necessarily benefit from those regulatory activities. Accordingly, the Commission should revise its rules to treat new services costs as overhead and recover them from all fee payors.

II. COMSAT SHOULD BE REQUIRED TO PAY ITS FAIR SHARE OF REGULATORY FEES

Second, the record supports GE Americom's argument that COMSAT should be required to pay regulatory fees. GE Americom Comments at 6-8. PanAmSat correctly points out that the Commission's current regulatory fee system, which exempts COMSAT from payment requirements, results in a two-fold windfall for COMSAT. First, it enables COMSAT to escape paying its fair share for the Commission's regulation of satellite services. Second, it requires COMSAT's competitors to bear the burden of costs incurred in regulating COMSAT.

PanAmSat Comments at 9. In order to promote healthy and robust competition in the marketplace for satellite services, the Commission should begin charging COMSAT GSO satellite regulatory fees.

As GE Americom and PanAmSat have demonstrated, Section 9 does not exempt COMSAT from the payment of space station fees. GE Americom Comments at 7-8; PanAmSat Comments at 9. PanAmSat points out that there is every reason to believe that Congress intended COMSAT to pay regulatory fees, because COMSAT is within the Commission's jurisdiction, files applications, and pays the same application fee for space stations as non-Signatory satellite applicants. *Id.*

Although the D.C. Circuit rejected the Commission's attempt to impose a new fee category (*i.e.*, a "Signatory fee") on COMSAT absent of a change in law or Commission policy, it in no way limited the Commission's ability to impose an existing fee category on COMSAT. 2/ Because it is beyond question that the FCC expends resources and incurs considerable expenses on tasks attributable directly to COMSAT, 3/ Section 9 demands that COMSAT be responsible for paying its fair share of regulatory fees.

2/ *See COMSAT Corp. v. Fed. Communications Comm'n,* 114 F.3d 223, 227-28 (D.C. Cir. 1997).

3/ The Commission in 1996 concluded that almost 15% of the costs associated with space station regulation were, in fact, attributable to its oversight and regulation of COMSAT. PanAmSat Comments at 8 (citing *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1998,* 11 FCC Rcd 16527, 16528 (1996)).

III. REGULATORY FEES SHOULD APPLY TO FOREIGN-LICENSED PROVIDERS SERVING THE U.S. MARKET

GE Americom also demonstrated in its comments that foreign-licensed satellite service providers that enter the U.S. market should be subject to regulatory fees. GE Americom Comments at 9-10. The Commission deferred this issue when it established rules for foreign satellite entry in the *DISCO II* proceeding. 4/ The Commission should take this opportunity to propose rules for payment of regulatory fees by foreign-licensed providers in order to provide a level playing field for competition.

IV. INTERNATIONAL BEARER CIRCUIT FEES SHOULD BE APPLIED ONLY TO COMMON CARRIERS

GE Americom also agrees with PanAmSat that the Commission should revise its policies with respect to the collection of international bearer circuit regulatory fees. PanAmSat Comments at 2-7. As PanAmSat explains, the statue permits the assessment of such fees only on common carriers, and the Commission's decision to extend such fees to private carriers is therefore unlawful. *Id.* at 2-3. None of the justifications the Commission put forward when it decided to impose international bearer circuit fees on private carriers can overcome the clear statutory language demonstrating the intent of Congress. Accordingly, the international

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4/ *See In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, et al.*, IB Docket No. 96-111, *Report and Order,* 12 FCC Rcd 24094, 24169 (1997).

bearer circuit fee should be imposed only on common carriers as required by the Communications Act.

V. THE COMMISSION SHOULD REVIEW ITS COST ACCOUNTING SYSTEM

Finally, GE Americom agrees with PCIA that the Commission should use this proceeding to reevaluate and clarify its cost accounting system. As PCIA points out, there may be considerable confusion over the method through which the Commission records and calculates feeable activities. PCIA Comments at 3-5. To avoid this confusion, the Commission should review its cost accounting procedures and provide detailed instructions regarding feeable activities to Commission employees.

CONCLUSION

For the reasons stated above, the Commission should amend its regulatory fee structure to establish a fee category for new services and require COMSAT and foreign-licensed satellite services providers to pay their fair share of regulatory fees. The Commission should also restrict the applicability of

international bearer circuit fees to common carriers. Finally, the FCC should use this opportunity to reevaluate and clarify its cost accounting system.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of GE American Communications, Inc. in MD Docket No. 98-200 was served by U.S. Mail or hand delivery (indicated by "*") this 19th day of January 1999 to:

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